

KHSAA DUE PROCESS PROCEDURE

(Case situations refer to rulings and interpretations used to interpret and administer these provisions which can be found in the Case Situation section of the Handbook. Where possible, additional cross-referencing information has been included).

In compliance with KRS Chapter 13B, the Board of Control of the Kentucky High School Athletic Association has adopted the following Due Process Procedure for appealing decisions of the Commissioner or Board of Control. Only relevant KHSAA additional definitions are listed in this procedure, and all other procedural questions, definitions and interpretations default to the current adopted version of Chapter 13B.

1. Definitions

"Commissioner" means the person hired as the Commissioner of the Kentucky High School Athletic Association or the member of the Commission (Assistant Commissioner) designated by the Commissioner to rule in a particular matter.

"Board of Control" means the duly elected or appointed members of the Kentucky High School Athletic Association Board of Control.

"Recommended Order" means the whole or part of a preliminary hearing report to the Board of Control for the disposition of an administrative hearing.

"Final Order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by the Board of Control.

2. Foreign Students Not Coming Through Board of Control Approved Programs

Any foreign student not being placed in a Kentucky school through an approved exchange agency may request eligibility during the initial year enrolled at a Kentucky school by applying directly through this appeals process in accordance with Bylaw 6. The appropriate body (committee, board or hearing officer) shall determine the legitimacy of the transfer and the conditions for exceptions to the one-year period of ineligibility. In order to be considered for this waiver, the student shall be in compliance with all U.S. Immigration and Naturalization Service regulations; must be in the first and only year as a student at the school; must not be a graduate of the 12th or terminating grade or its equivalent in either the U.S. or his/her home country; shall be in possession of a complete transcript of records that has been translated into English prior to the request for eligibility; and shall be in possession of an J-1 student education visa issued by the U.S. Immigration and Naturalization Service. In addition, the student's host family cannot include members of the coaching staff at the KHSAA member school at which participation is desired. Any student having made the election to request a waiver of the one-year period of ineligibility and having been granted the one year waiver of the period of ineligibility shall not be eligible, under any circumstances, for any additional eligibility while enrolled in a Kentucky school.

3. Commissioner's Authority to Rule

Requests for rulings should be made in writing with a return address for response. Oral requests for rulings and/or requests by electronic mail will not be accepted. The Commissioner of the KHSAA (as defined in this procedure) is empowered to interpret the provisions of the KHSAA Constitution, Bylaws and Tournament Rules in accordance with Article IV, Section 3 of the Constitution of the KHSAA and is empowered to restore the eligibility of students or other participants who do not meet the provisions of KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Conduct), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), Bylaw 10 (Recruitment), or 12 (Awards). Such restoration may only be granted in cases where strict application of the applicable bylaw is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.

The Commissioner shall act upon any appeal filed in accordance with this procedure when all information is available to all parties. Any appeal seeking a ruling based on unknown or speculative factors shall be denied by the Commissioner as being premature. Unless further

investigative information is needed, it shall be the objective of the Association to have the Commissioner's determination within thirty (30) days of receipt of the request.

4. What May Be Appealed and Who May Appeal to the Hearing Officer

If a participant affiliated with a KHSAA member school, parent affiliated with a KHSAA member school, contest official, coach affiliated with a KHSAA member school or other official representative of a KHSAA member school is dissatisfied with a decision of the Commissioner interpreting a provision or provisions of KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Conduct), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), Bylaw 10 (Recruitment), or 12 (Awards); the decision may be appealed to the Hearing Officer of the KHSAA through the Commissioner's office. If the appeal is timely filed, a hearing shall be conducted in accordance with these procedures.

All appeals involving student eligibility relating to a fall sports participant (desiring to participate in cross country, football, golf, soccer or volleyball) shall be filed by the immediately preceding July 15th; the winter season (desiring to participate in basketball, swimming or wrestling), by the immediately preceding September 15th; and the spring season (desiring to participate in baseball, softball, tennis or track), by the immediately preceding January 15th. All appeals filed after these deadlines for a particular season shall be filed within fifteen (15) days of the issuance of the decision from the Commissioner. Appeals not timely filed shall not be heard, absent clear and compelling justification.

Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the Hearing Officer as being premature and eligibility denied.

5. What May Be Appealed and Who May Appeal to Board of Control

If a participant affiliated with a KHSAA member school, parent affiliated with a KHSAA member school, contest official, coach affiliated with a KHSAA member school or other official representative of a KHSAA member school is dissatisfied with a decision of the Commissioner's interpreting a provision or provisions of the bylaws of the Association (other than 2, 4, 5, 6, 7, 8, 9, 10 and 12 as detailed above), and such individual or school is an aggrieved and affected party, the party may submit in writing a notice of appeal of the decision and request for a formal hearing before the Board of Control in accordance with adopted policies and procedures of the Board.

If a participant affiliated with a KHSAA member school, parent affiliated with a KHSAA member school, contest official, coach affiliated with a KHSAA member school or other official representative of a KHSAA member school is dissatisfied with a recommended order of the KHSAA Hearing Officer in a matter heard concerning Bylaws 2, 4, 5, 6, 7, 8, 9, 10 and 12, and such individual or school is an aggrieved and affected party, the party may submit in writing a notice of exceptions the decision in accordance with the provisions of this procedure.

Appeals and exceptions to the Board of Control received more than fifteen (15) days prior to the first day of the next regularly scheduled Board of Control meeting are to be considered by the Board of Control at that next regularly scheduled meeting following the receipt of the exceptions.

Aggrieved/affected parties may request a special meeting of the Board of Control in the interim prior to the next regularly scheduled meeting, but if such request is granted by the President of the Board of Control, the appealing party shall be responsible for the expenses associated with Board of Control travel to the meeting.

Any appeal filed in accordance with this procedure shall be acted upon by the Board of Control at the next regular meeting of the Board of Control that conforms to the

deadlines and procedures listed herein. Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the Board of Control as being premature and eligibility denied.

6. Support Information

The Commissioner or his/her staff, or a representative of the Association designated by the Commissioner, Hearing Officer and/or Board of Control shall request support documentation for all matters upon which the appeal is based.

Prior to issuing a recommended order, the KHSAA Hearing Officer may direct the Commissioner's office to perform any investigative functions necessary to ensure that all support documentation and evidence is considered in making a recommendation.

7. Notice of Hearing

If an individual is pursuing the appeal and not a member school, notice shall also be made by first class mail to all affected member schools.

The notice shall be plain in nature and shall include:

- a) All information and notices required by KRS Chapter 13B;
- b) A copy of the KHSAA Due Process Procedures.

8. Attendance at the Hearing

Representatives of appealing parties and all potentially affected parties are entitled, advised, recommended and encouraged to attend hearings. In the instance of a student submitting the appeal, the member school that the student attends may represent the student at the administrative appeal. Any person entitled to be in attendance at the hearing may represent himself or herself. These persons are also entitled to be represented by counsel, provided that they notify all other parties involved in the appeal of the name, address and telephone number of the counsel at least three (3) days in advance of the hearing.

9. Hearing Procedures

The hearings shall be conducted in accordance with KRS Chapter 13B.

If an aggrieved or interested party fails to attend or participate in a hearing, the hearing officer or the Board of Control, at its discretion, may deny that party the right to seek additional review or present additional evidence at a later date.

10. Recommendation of Hearing Officer

The recommendation of the hearing officer shall be completed and submitted to the Commissioner not less than thirty (30) days after receiving the official record of the proceeding. The decision shall include his/her findings of fact, conclusions and recommended disposition of the hearing, including any recommended penalties, if applicable.

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date of the recommended order is mailed within which to file exceptions to the recommendations with the Commissioner.

~~[If the hearing officer recommends reversing the Commissioner's decision on an eligibility matter, the Association's decision shall be stayed, and the student in question shall become immediately eligible pending final Board of Control action.]~~

11. Decision of the Commissioner and Board of Control

The Board shall consider the hearing officer's report on each applicable case for which a recommended order has been received and the deadline for exceptions passed not less than fifteen (15) working days prior to the first day of the Board of Control meeting. Any recommended order received after that time shall be considered at the next regular Board of Control meeting or may be heard by an interim meeting of the appropriate regional eligibility committee or a special meeting of the Board of Control in accordance with the provisions of this procedure.

The Board of Control may accept the recommended findings of fact, conclusions and order and adopt the recommended order as a final order; it may reject or modify all or part of the findings of fact, conclusions and/or recommended order and issue a final order; or it may remand the matter, in whole or in part, to the hearing officer for further

proceedings as appropriate. If the final order differs from the recommended order, the Board of Control shall include separate statements of findings of fact and conclusions of law.

Unless the Board of Control President grants the motion to introduce additional evidence or the request for an oral argument, the appeal shall be considered on the written record alone. Only in the case where significant factual circumstances have changed since the time of the administrative hearing or when the administrative record does not permit adequate review or the hearing proceedings shall oral argument be permitted. Only in extraordinary cases where additional evidence is allowed to be introduced shall the appeal be considered de novo in nature.

The final order shall be in writing and stated in the record. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

The decision of the Board of Control of the KHSAA in a matter related to the Constitution and Bylaws or Tournament Rules of the KHSAA shall be considered final. Further appeals rights would be vested in the appropriate Circuit Court.

12. Judicial Review

All final orders of KHSAA rules shall be subject to judicial review in accordance with KRS Chapter 13B. A party shall institute an appeal by filing a petition in the appropriate Circuit Court within thirty (30) days after the final order is mailed or delivered. A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within this procedure. A petition for judicial review shall not automatically stay a final order pending the outcome of the review, but the petitioner may request a stay from the court.

13. Records

The Association shall maintain on file an official record of the complete proceedings of each administrative hearing and subsequent official actions.

(See Case Situations DPP-1, DPP-2, DPP-3, DPP-4 and DPP-5)